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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. GREGG MONROE COOK, Defendant and Appellant.	E034613 (Super.Ct.No. SWF003359) OPINION

APPEAL from the Superior Court of Riverside County. Ronald R. Heumann, Judge. Affirmed.

Maureen J. Shanahan, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General, Peter Quon, Jr., Supervising Deputy Attorney General, and Hector M. Jimenez, Deputy Attorney General, for Plaintiff and Respondent.

Following the denial of defendant Gregg Monroe Cook's Penal Code,[1] section 1538.5 motion, he pled guilty to manufacturing methamphetamine. (§ 11379.6, subd. (a).) On appeal, he challenges the denial of the motion. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At the hearing on defendant's motion, Riverside County Sheriff's Deputy Chavez testified that at approximately 11:44 a.m. on January 1, 2003, he and two other deputies responded to the Little Valley Road area in Perris regarding a missing truck. The deputy contacted defendant who said he was renting a small residence on the property. The deputy also contacted Mr. Krontz, who owned the property, and informed him that the deputies were looking for a truck. Mr. Krontz consented to a search of his property, which Deputy Chavez estimated was two acres, for the missing truck. Deputy Chavez saw a large semitrailer and asked who owned it. Defendant said it was his, gave consent to look inside for the missing vehicle, and opened the semitrailer.

Deputy Chavez, whose expertise is undisputed, smelled a strong chemical odor as soon as defendant opened the semitrailer door. Two other deputies entered and found items related to a possible drug lab. At approximately 12:30 p.m., defendant was placed in a police vehicle based on what Deputy Chavez had seen. Although defendant was not handcuffed, he was not free to leave. He verbally consented to a search of his home while he was seated in the police vehicle, but he refused to sign the written consent form. He said his refusal was based on the advice he had received from an attorney in the past.

[1] All statutory references are to the Penal Code unless otherwise noted.

His home was searched between 12:30 p.m. and 1:00 p.m. He was taken out of the police vehicle several times and eventually released that night. Deputy Chavez estimated they found the missing truck about an hour or two after searching defendant's semitrailer.

Deputy Collazo testified he arrived at the scene shortly after Deputy Chavez and they located the missing truck about 10 minutes later. The trailer, which was the first thing he saw when he arrived at the property, was large enough to put a truck inside. He testified defendant gave the deputies verbal consent to search his trailer and home, but refused to sign a consent-to-search form. Defendant helped the deputies open the door to the trailer. The deputies found muriatic acid, acetone, tubing and some glassware in defendant's home.

Detective Salisbury, who is a member of the Special Investigation Bureau specializing in major narcotics and methamphetamine labs, testified he was the site safety officer. He arrived around 2:00 p.m. and Detective Holder, the primary lead investigator, arrived separately. They spoke with the deputies and then with defendant. Defendant gave Detective Holder verbal consent to search his home and trailer and signed the consent-to-search form.

Detective Salisbury testified they found a safe inside defendant's home. When Investigator Holder asked for the combination, defendant said he could not remember it and had not opened the safe in some time. He could not remember whether there was anything inside the safe, but he gave permission to "pop" or "bust it open." Sergeant Strough "busted open" the safe and found it contained 5 to 10 pounds of red phosphorus, a controlled substance. Only eight ounces of that substance can be purchased in a 30-day

period. The large amount of red phosphorus found in the safe could produce 10 to 20 pounds of methamphetamine and was consistent with "large scale cartel labs."

Detective Salisbury testified defendant expressed his desire to work with law enforcement in exchange for a benefit and became very cooperative as he spoke about large methamphetamine labs in the area. Between 6:00 p.m. and 7:00 p.m., he took officers to sites where he had cleaned previous drug labs. He convinced the officers he had knowledge of a group that cooked large amounts of methamphetamine every week or two. He expected the group to contact him within a week so he could clean the sites. He would be able to provide the officers with the locations so they could take enforcement action. When he was released later that night, there was an understanding he would provide information about other labs at a later date.

Defendant testified the deputies arrived at his residence around 11:00 a.m. and told him they were looking for a missing truck. He immediately told them where the truck was and they found it within minutes of their arrival. They probed around for the next 30 to 45 minutes until they arrested him for a traffic violation. They asked him about his trailer and requested permission to search it. He denied their request and asked if they had a search warrant. They said they did not have a warrant and, after they searched the trailer, they asked him to sign a paper. Although he did not give them permission to search his trailer, they pried open the trailer. Then Detectives Holder and Salisbury asked permission to search his home and he refused. He again asked if they had a search warrant and they said, "No." Detectives Holder and Salisbury asked for the combination to his safe and he refused to give it to them.

Defendant testified he was interested in cooperating with the detectives and around 6:00 p.m., he drove them to a site where he "had found the material that was found in [his] safe." He denied telling the officers he had not opened the safe in years. Rather, he told them he did not want the safe opened and refused to give them the combination. He signed the consent-to-search form at 10:00 p.m. after everything was found and the safe was opened. He spent about eight hours in the back of the patrol car.

Denying defendant's motion, the court stated it was a question of credibility and based on the totality of the evidence it appeared the deputies' testimony made "more logical sense than the testimony that the defendant is now giving us after he was released that day, wasn't taken into custody, was going to cooperate, then apparently didn't provide any cooperation to officers as he had promised. He was arrested later. [¶] Now, he comes into court and says he never consented. He never did any of these things. It just seems somewhat illogical when you take the totality of the circumstances of that particular day into consideration."

DISCUSSION

Defendant's sole contention is that the trial court erroneously denied his suppression motion. In support of his contention, he argues: (1) the trial court erred in finding he consented to the search of the trailer or his home based on the totality of the circumstances; (2) the People did not establish he freely and voluntarily consented to the searches of his trailer and his home; (3) the People failed to prove the subsequent written consent was voluntary; (4) the warrantless search of the safe was invalid and the evidence inside the safe should have been suppressed; (5) the trial court erred in denying the

motion where the People failed to prove the consents following the initial invalid consent were sufficiently attenuated from the initial illegal entry and search so as to dissipate the taint of the entry; and (6) if the issue was not properly preserved for appellate review, the issue must be addressed under a claim of ineffective assistance of counsel. As discussed below, we conclude substantial evidence supports the trial court's finding that defendant voluntarily consented to the search of his property. Therefore, there were no illegal entries and no warrant was required.

In reviewing the denial of a suppression motion, we defer to the trial court's factual findings where supported by substantial evidence, but exercise independent judgment to determine whether, on the facts found, the search was reasonable under Fourth Amendment standards. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597, superseded by statute on another ground as stated in *People v. Trujillo* (1990) 217 Cal.App.3d 1219; *Ornelas v. United States* (1996) 517 U.S. 690.) "The touchstone of the Fourth Amendment is reasonableness" (*Florida v. Jimeno* (1991) 500 U.S. 248, 250) and it is well established that a search based on voluntary consent is reasonable and valid. (*Illinois v. Rodriguez* (1990) 497 U.S. 177, 184; *People v. Memro* (1995) 11 Cal.4th 786, 846-847 [a voluntary consent to search is an exception to the general prohibition against warrantless entry and search].)

"The question of the voluntariness of the consent is to be determined in the first instance by the trier of fact; and in that stage of the process, 'The power to judge credibility of witnesses, resolve conflicts in testimony, weigh evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor proper exercise

of that power, and the trial court's findings -- whether express or implied -- must be upheld if supported by substantial evidence.' [Citations.]" (*People v. James* (1977) 19 Cal.3d 99, 107, quoting from *People v. Superior Court* (*Keithley*) (1975) 13 Cal.3d 406, 410.)

Here, the trial court expressly found defendant consented to the searches, its ruling denying defendant's motion implicitly holds his consent was voluntary, and substantial evidence supports that ruling. Accordingly, we are bound by the ruling.

Substantial evidence establishes the deputies were lawfully on the Krontz property, with the consent of Mr. Krontz, investigating a missing truck report when they saw defendant's semitrailer and requested consent to search. The trial court expressly found the testimony of the law enforcement officers that defendant consented to the search was more credible than defendant's contradictory testimony and we are bound by that finding, as it is not inherently improbable. (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 578 ["'If a trier of fact has believed the testimony . . . this court cannot substitute its evaluation of the credibility of the witness unless there is either a physical impossibility that the testimony is true or that the falsity is apparent without resorting to inferences or deductions. [Citations.]'"]; *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140-141.) Contrary to defendant's arguments, minor discrepancies in the testimony of the law enforcement officers does not justify total rejection of that evidence. In contrast, defendant's testimony that he "found" the 5 to 10 pounds of red phosphorus recovered from his safe is incredible, since red phosphorus is a controlled substance and only eight ounces can be purchased in a 30-day period. What is plausible is that defendant

consented to the search of the semitrailer (perhaps because he failed to realize the experienced deputy would recognize the "strong chemical odor" and the items that "were related to a possible drug lab") and after he was placed in the police vehicle, he consented to the subsequent searches to gain favor and thus avoid prosecution.

The fact that defendant was in the police vehicle and not "free to leave" (because of the strong chemical odor and items related to a drug lab) when he consented to the search of his home and safe does not establish involuntariness. (*United States v. Watson* (1976) 423 U.S. 411, 424; *People v. Miller* (1999) 69 Cal.App.4th 190, 203.) There is no evidence he was led to believe he could not withhold his consent and the deputy was not required to advise him of his right to refuse consent since knowledge of the right to refuse is not prerequisite to a valid consent. (*Ohio v. Robinette* (1996) 519 U.S. 33; *People v. James, supra,* 19 Cal.3d at p. 115.) The failure to give *Miranda* warnings did not make his consent involuntary, since the purpose of the search is to obtain physical, not testimonial evidence. (*People v. James, supra,* 19 Cal.3d at pp. 114-115.) There is no evidence to support a claim the deputies asserted authority that coerced defendant into giving consent or that made the consent less than voluntary. There is no evidence that when defendant consented to the searches the deputies displayed a weapon, threatened defendant or used authoritative language or voice tone indicating that compliance with the request might be compelled. There is evidence defendant cooperated in an attempt to obtain a benefit.

Defendant argues the trial court's ruling cannot be upheld because the court failed to indicate *when* he consented to the searches of his trailer and home and *whether* he

consented to the search of his safe. Defendant's argument is negated by the record which establishes Detective Salisbury testified defendant gave permission to "pop" or "bust" open the safe. Thus, substantial evidence supports the finding that defendant consented to the search of his safe. The record also establishes the following chronology of events: Deputies who were at the scene testified defendant initially refused to sign a consent-to-search form, but he orally consented to a search of his semitrailer, then he consented to a search of his home, then he consented to a search of his safe, and he subsequently signed a consent-to-search form. Also, Detective Salisbury testified that after he and Detective Holder arrived, they spoke with the deputies who were at the scene before they spoke with defendant and defendant signed the consent-to-search form. Thus, the record establishes *when* defendant consented to the searches. Furthermore, defendant's failure to request more specific factual findings waived appellate review of the issues. (*People v. Cunningham* (2001) 25 Cal.4th 926, 984 ["failure to press for a ruling waives the issue on appeal"].) Defendant's argument that the issues must be addressed under a claim of ineffective assistance of counsel fails under *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 267, because additional facts relevant to the issues and possibly prejudicial to defendant may very well have justified counsel's decision.

In view of the foregoing, we conclude the trial court did not err in denying defendant's suppression motion.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

WARD
J.

GAUT
J.